Report of the NRCB/CEAA Joint Review Panel
Application #9801 – Alberta Infrastructure
June 2000

Highwood Storage and Diversion Plan
Request for Extension of Completion Date
For Board Order 9601-1

NRCB
Natural Resources
Conservation Board

Canadian Environmental Assessment Agency
Agence canadienne d'évaluation environnementale

Alberta
GOVERNMENT OF ALBERTA

Canada

HIGHWOOD STORAGE AND DIVERSION PLAN
REQUEST FOR EXTENSION OF COMPLETION DATE FOR BOARD ORDER 9601-1

NRCB Application #9801

June 2000

Published by:

NRCB/CEAA Joint Review Panel
4th Floor, Sterling Place
9940 - 106 Street
Edmonton, Alberta
T5K 2N2

Telephone: (780) 422-1977
Facsimile: (780) 427-0607

1 Introduction and Background

In 1998, the Little Bow Project/Highwood Diversion Plan Review resulted in provincial approvals for the Little Bow River Reservoir, the Highwood River diversion works and a canal to the Little Bow River, and a diversion of water from Mosquito Creek to Clear Lake. Two other components of the application by Alberta Infrastructure, the potential expansion of offstream storage at Women's Coulee (Figure 1) and the Highwood Diversion Plan, were also considered in that review. However, in Board Order 9601-1 (the Board Order), the decision on those two project aspects was deferred in order to obtain further information. A Joint Review Panel (the Panel) has subsequently been established under the *Natural Resources Conservation Board Act (NRCBA)* and the *Canadian Environmental Assessment Act* (*CEAA*) to consider those two matters, including new information.

The initial information requirements needed to address the outstanding technical, social, economic and environmental issues related to the storage proposal and to an operating plan for low flow periods in the Highwood basin were summarized in the Board Order. A reassessment of the instream flow needs (IFN) for the Highwood River was one requirement of the Board Order.

A second requirement was for Alberta Infrastructure to develop additional information on the feasibility of flow augmentation in the Highwood River through offstream storage. This was to include a more detailed assessment of the Women's Coulee site, as well as a comparative analysis of this site to alternative storage sites including Tongue Creek and Stimson Creek (see Figure 1), among others.

The third requirement was a revised diversion plan that addressed instream and consumptive needs during low flow periods. The 1994 Operating Guidelines for the Highwood River were to remain in effect until such time as a new diversion plan was reviewed and approved.

The Board Order required that Alberta Infrastructure report back to the Joint Panel with the specified information within 12 months (i.e. June 1999). By way of letters dated 14 May 1999 and 17 March 2000, Alberta Infrastructure applied for an extension of that time period and the Panel held a public meeting on 19 April 2000 to consider that request. However, in considering the requested extension, the Panel believes that it also should have regard for any other relevant issues raised by the participants at the meeting and it has addressed those issues in this report.

It is worth noting that at the 19 April 2000 meeting in High River, the Panel was asked to suspend or revoke the approvals that were issued for the project components approved by the Little Bow Project/Highwood Diversion Plan Review. In fulfilling its mandate, the Panel does not believe it has the authority to vary or revoke the approvals issued as a result of that review. However, the Panel does believe that in carrying out its mandate it must be cognizant of the effects of those approvals.

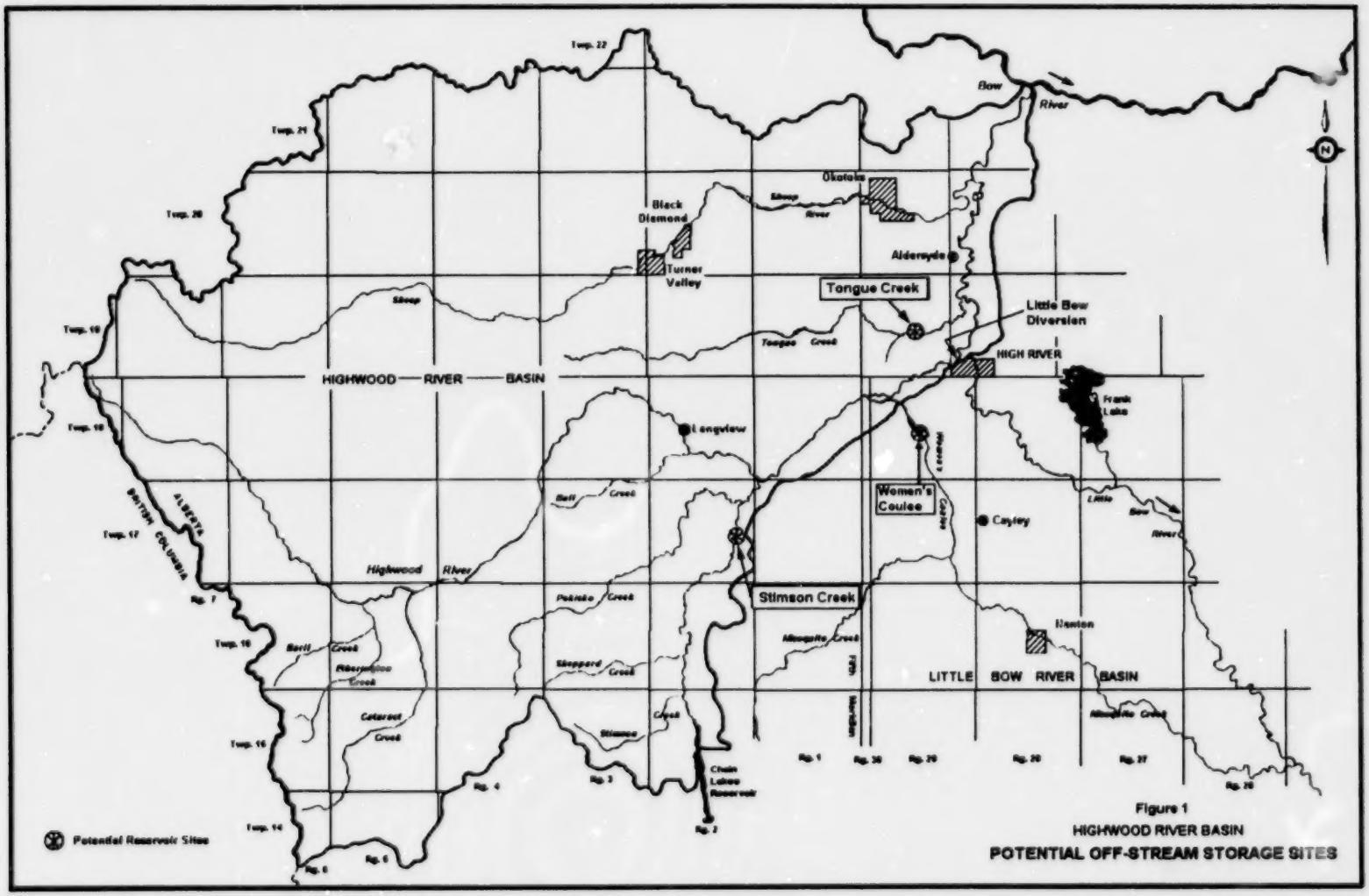


Figure 1
HIGHWOOD RIVER BASIN
POTENTIAL OFF-STREAM STORAGE SITES

2 Views of the Parties

Numerous parties made oral and/or written presentations to the Panel. These parties and their respective issues are described and summarized below.

2.1 Alberta Infrastructure

Alberta Infrastructure filed written submissions regarding its progress in fulfilling the terms set out in the Board Order. It provided a brief history of the Little Bow Project and an update on work that has begun in relation to the three components that have been previously approved: i.e. Clear Lake Canal, Little Bow River Reservoir and Little Bow Canal Enlargement. Alberta Infrastructure also gave a summary of its Mitigation Progress Report of June 1999 and the rationale behind its request for an extension to the deadline in responding to the Board Order.

Alberta Infrastructure noted that it had been directed in the Board Order to carry out public consultation regarding the collection of information. It believed that it had made a concerted effort to engage the public in reviewing and discussing its proposed activities. However, Alberta Infrastructure stated that it had encountered problems with its public consultation process to date. Alberta Infrastructure attributed some of the difficulties to the public's linking of the consultation process to the scientific studies it required to gather the information necessary to evaluate the feasibility of the various storage options. Alberta Infrastructure also noted that the parallel development of the Highwood River Basin Management Plan (the Highwood Management Plan) by Alberta Environment was also an issue with the public. The differing time frame for Alberta Infrastructure's completion of the investigations of the storage sites (one year) and the completion of the development of the Highwood Management Plan (two years) had led to considerable public concern and confusion and had become, in its view, another obstacle in the process. Alberta Infrastructure believed that its inability to answer participants' questions regarding the Highwood Management Plan at the public meetings had led to problems in the process as well.

Alberta Infrastructure noted that, at several of the public meetings, participants expressed their belief that both its review and the Highwood Management Plan should be carried out separately and simultaneously so that all information on storage options, alternatives to storage, and water demand and supply would be available to the public and the Panel before a final decision was made on the project. Alberta Infrastructure believed that it was possible to integrate the planning elements of the storage options into the Highwood Management Plan and at the same time, complete the scientific and engineering studies required for storage site selection. It felt that, in developing the Highwood Management Plan, all options including storage needed examination in order to make informed decisions regarding water priorities and water allocations.

Alberta Infrastructure stated that it believed that it required additional time to compile the necessary scientific and technical studies to fulfill the terms of the Board Order. It had attempted to study and gather information on potential storage sites and report back to the Board within the proposed time frame; however, it had not been successful in acquiring access to lands for studies that were needed to complete the necessary data collection. It also needed more time to carry out and improve its public consultation process. Alberta Infrastructure indicated that, with landowner cooperation, it believed that it could complete all of its field investigations by 2001

and then file a response to the Board. By dovetailing the two processes, it believed the Panel would be able to consider Alberta Infrastructure's response to the Board Order in the context of those portions of the Highwood Management Plan relevant to storage needs in the Highwood River basin.

Alberta Infrastructure also requested that the Panel, in its report, address the following questions:

- What role will the Panel have in identifying potential storage sites in the Highwood River Basin?
- Does the Panel believe that decisions should be made by the Alberta government on the need for additional storage sites with or without the advice of the Panel?
- Should the study of storage sites be part of the Highwood Management Plan and what would be the appropriate time frame to complete those studies?
- In the event that land access is not obtained, what type of information would be sufficient to make informed decisions?
- What criteria should be used to eliminate potential storage sites from consideration?
- Would the Panel be willing to impose a planning freeze in the areas of Tongue Creek and Women's Coulee until the necessary studies are complete?

2.2 Alberta Environment

Alberta Environment submitted a written brief containing a list of its responsibilities related to the Board Order and the Conditions of Approval, and an outline of future activities required for the development of the Highwood Management Plan. Alberta Environment also updated its progress on: the Frank Lake Water Quality Mitigation Plan, the Little Bow River Reservoir Water Quality Protection Plan, the revision of the IFN analysis and the development of a Revised Diversion Plan.

In its submission, Alberta Environment supported Alberta Infrastructure's request for an extension to the deadline for responding to the Board Order. Alberta Environment also tabled a proposal to complete those portions of the Highwood Management Plan relevant to the Board Order within the extended time frame requested by Alberta Infrastructure.

Alberta Environment also proposed establishing a Public Advisory Committee (PAC) to provide public input and advice on the Highwood Management Plan. Once established, the PAC would develop its own Terms of Reference and select an independent facilitator to chair its meetings and the public consultation process. Alberta Environment also believed that it would be most effective and efficient to merge the Highwood Management Plan's public consultation process with Alberta Infrastructure's public consultation process on storage options.

Alberta Environment indicated that Phase 1 of the Highwood Management Plan would focus on the assessment of alternative water management scenarios, including storage options, followed by the selection of a water management strategy. This information would then be used when developing the revised Diversion Plan in response to the Board Order. Alberta Environment indicated Phase 1 of the Highwood Management Plan could be completed by March 2002.

2.3 Upper Little Bow Basin Water Users Association

The Upper Little Bow Basin Water Users Association (ULBBWUA) stated that it consisted of individuals living along the Little Bow River between High River and the approved site of the Little Bow River Reservoir. The ULBBWUA submitted a written brief containing a list of concerns about the public consultation process being used by Alberta Infrastructure to address the requirements of the Board Order and the development of the Highwood Management Plan. It concluded that the consultation process had failed to assure the affected public that Alberta Infrastructure would adequately address its issues and concerns. In its view, the lack of procedural structure and operational protocols for the public consultation meetings has made the process ineffective. The ULBBWUA stated that there is now a negative public perception of the Board Order and its implementation process. The ULBBWUA believed that if the Panel grants Alberta Infrastructure an extension to the information deadline without resolving the problems associated with the consultation process, the negative public perception will remain and effective stakeholder involvement will not occur.

The ULBBWUA offered some suggestions for the content of future studies. It suggested that the impacts of land uses on the existing flood plain and riparian lands, of water use and of the environmental practices of the Highwood Basin catchment be assessed. It also suggested that the effects of future population and industrial growth on the water quality and supply in the Highwood and Little Bow Basins needed to be examined.

The ULBBWUA also provided comments on the process that should be used to develop the Highwood Management Plan. It suggested that the planning process begin immediately and include the use of an independent facilitator to chair the public consultation process. It also requested that the process of evaluating the Women's Coulee storage site be linked to the Highwood Management Plan. The ULBBWUA believed that, under an improved public consultation process, all participants should be informed of water demands, allocations and priorities in the Highwood River basin. It indicated that the process should provide a forum for participants to present their views and concerns and to have them addressed by Alberta Infrastructure and Alberta Environment. The ULBBWUA stated that a facilitated process would allow for productive discussions of water management scenarios, including non-storage and storage options, and their associated impacts. The ULBBWUA also requested that the Panel take a more pro-active role in the entire review process. If its suggestions were implemented, the ULBBWUA indicated that it could support Alberta Infrastructure's request for an extension to the deadline for responding to the Board Order.

2.4 Lower Mosquito Creek Water Users Association

The Lower Mosquito Creek Water Users Association (LMCWUA) noted that it was formed in 1998 and consists of individuals who live around Mosquito Creek (see Figure 1) and are agriculturally based. It filed a written submission that identified concerns relating to the impacts of low flow conditions that may occur under the Highwood Management Plan. The LMCWUA was concerned with the silt, nitrogen and phosphorus loading in Mosquito Creek and its potential impacts on the water quality of Clear Lake and the Little Bow River Reservoir. It requested that the construction of the Clear Lake Canal and the Little Bow River Reservoir be postponed until studies of Mosquito Creek are completed.

The LMCWUA requested that the Highwood Management Plan be completed before studies are undertaken to identify potential water storage sites. It also proposed that an independent facilitator be used to run an effective public consultation process. The LMCWUA suggested that the PAC for the Highwood Management Plan be comprised of individuals who represent specific groups. It also identified the need for the Panel to become more involved in the entire process.

2.5 Baker Creek/Old Women's Coulee Coalition

The Baker Creek/Old Women's Coulee Coalition (BCOWCC) stated that it represents approximately 78 landowners and families in the Baker Creek and Women's Coulee area. The BCOWCC submitted a written brief expressing its concerns with the consultation process conducted to date by Alberta Infrastructure. In its view, the process lacked direction or a mechanism to obtain and document feedback from participants on the social, economic and environmental issues related to the Board Order.

The BCOWCC indicated that it would not support an extension to the filing deadline unless an independent facilitator, agreeable to both Alberta Infrastructure and all participants, was appointed to conduct a public consultation process along the lines suggested by BCOWCC. It argued that a structured plan for public consultation must be developed and this would include: a defined method of recording public input; opportunities for discussion and feedback; inclusion of public input into evaluation criteria and study requirements; and access to consultants who are responsible for the project's studies. The BCOWCC also requested that the development of the Highwood Management Plan and the investigations of potential water storage sites be undertaken simultaneously, but with separate public consultation processes with independent facilitators.

2.6 The Norstroms (Mr. John and Mrs. Linda Norstrom)

The Norstroms stated that they are landowners in the area around Tongue Creek. They submitted a written brief citing three concerns. First, they reported experiencing stress because of the uncertainty of the project's location and they suggested that a planning freeze should have been implemented in areas believed to be potential storage sites. Second, they were concerned about the potential environmental impacts the project could have on bird and wildlife habitat. Third, the Norstroms indicated that project information and the results of all technical and scientific studies should be made available to the public.

2.7 Ms. Anita Buchan

Ms. Buchan is a Tongue Creek landowner and filed a written submission focusing on the environmental, economic and social impacts of the Board Order. She stated that she was concerned that, if a water storage site were built on Tongue Creek, a potential exists for the local landfill site, which is at a higher elevation, to contaminate the water reservoir below it. Ms. Buchan also stated that the majority of Tongue Creek residents do not want the project and that it could directly affect at least 125 landowners. She believed that the potential social and environmental impacts resulting from the project could not be justified.

Ms. Buchan also stated that she was concerned about the proposed project's effects on the transportation network of the surrounding communities. The project, she noted, would close secondary highways and re-routing would be necessary. This would come at a great cost and

significant inconvenience to local residents and local businesses. She wanted Alberta Infrastructure to carry out a feasibility study of all potential storage sites and to be able to eliminate certain areas from further study within a matter of months. Ms. Buchan did not support extending the timeline to 2001 because local residents would then have to wait several years to resolve the issue of storage site selection.

2.8 Ms. Celeste Strikes With A Gun

Ms. Strikes With A Gun stated that she is a member of the Peigan First Nation. She expressed concerns with how Alberta Environment and Alberta Infrastructure had been carrying out the requirements of the Board Order regarding aboriginal interests. Ms. Strikes With A Gun indicated that some of the required cultural components have not, in her view, been handled appropriately to date. She stated that it was essential for all Aboriginal people to be informed before they could make decisions or provide their consent with respect to this project. Ms. Strikes With A Gun also believed that the Highwood Management Plan and its proposed PAC would not be able to address and resolve the concerns of indigenous peoples. She was opposed to an extension of the deadline and also requested that the approval of the other project components be revoked.

2.9 The Denneys (Mr. Norman and Mrs. Janice Denney)

The Denneys stated that they are landowners along the diversion canal that is to be enlarged for the proposed Women's Coulee Project. They submitted a written brief indicating they would be directly impacted by the proposed project. The Denneys reported that the public participation process associated with the Board Order had not been effective and had been exclusionary. They requested that the development of the Highwood Management Plan begin immediately and that it include an analysis of all alternatives. The Denneys insisted that all work activities associated with the Board Order be suspended until the Highwood Management Plan is completed.

2.10 Landowners on the Diversion Canal to Women's Coulee

Nine landowners along the diversion canal for Women's Coulee filed a written submission to express their concerns regarding the Board Order. In their submission they identified three issues. First, the landowners would not support an extension to the deadline. Second, they requested a suspension of work activities arising from the Board Order. Third, the landowners stated that they would agree to the initiation of the Highwood Management Plan process only if it included: an examination of all alternatives to storage; a discussion of irrigation methods and management practices; an assurance that studies and data collection will not be duplicated; and, an assurance that riparian work on the Highwood River, which may lead to a moratorium on flood plain development, will be completed.

2.11 Mr. Wayne Corner and Ms. Carol Case

These individuals submitted a written brief indicating their concerns with Alberta Infrastructure's public consultation process. They believed that the process has been ineffective and one-sided. Mr. Corner and Ms. Case requested that the Highwood Management Plan be completed as soon as possible and include an analysis of all storage and non-storage alternatives. They also requested that the Panel re-examine the previous panel's recommendations and the associated approvals to determine if the three approved components are still viable projects. Mr.

Corner and Ms. Case also indicated that all construction activities associated with the three previously approved components should be stopped until the Highwood Management Plan is developed.

2.12 Stimson Creek Conservation Association

The Stimson Creek Conservation Association (SCCA) observed that it consists of several landowners around one of the potential water storage sites. It filed several submissions containing specific issues relating to the Board Order.

First, the SCCA stated that it was opposed to the construction of a water storage facility on Stimson Creek. Second, it did not approve of an extension to Alberta Infrastructure's filing deadline. Third, the SCCA requested that the Panel review the earlier decision and prevent the construction of the three approved project components until the Highwood Management Plan is developed. It also suggested that the issue of water storage and the identification of potential storage sites should not be dealt with under the Highwood Management Plan but under a separate planning process.

Fourth, the SCCA stated that it was concerned with the negative environmental, economic and visual impacts that a project would have on Stimson Creek. The SCCA stated that this area is a valuable and recognized example of a natural foothills watershed and must be protected. Finally, it requested that all documentation, information and scientific data related to the Board Order be made publicly available so that participants can independently review the material and be able to make informed decisions concerning the project. In order to review all the information and participate in the process, the SCCA also requested that funding be made available to interested participants.

2.13 Fisheries Coalition

The Fisheries Coalition stated that it consists of Trout Unlimited Canada, Trout Unlimited Bow River Chapter, Bow River Angling Outfitters Association, Don Pike operating as the Bow River Company, Bow River Troutfitters Ltd., Country Pleasures, Westwinds Fly Shop, Hanson's Fishing Outfitters Inc., and the "Must Be Nice" Drift Boat Company. The Fisheries Coalition indicated that Alberta Infrastructure's public consultation process for work resulting from the Board Order has been exclusionary and ineffective. It requested that a new consultation process be developed, including the use of an independent facilitator to chair the public meetings.

The Fisheries Coalition supported having the Highwood Management Plan begin immediately and requested that the issue of storage be discussed within the Highwood Management Plan process. It also suggested that NRCB and federal government representatives should be involved and contribute to the process.

The Fisheries Coalition claimed that the IFN assessment is the key to the entire Highwood Management Plan process. It believed that all participants should have access to IFN studies and project information in order to verify and to comment upon the results. In its view, funding should be made available so that participants could hire independent experts to review scientific data and information.

2.14 Tongue Creek Steering Committee

The Tongue Creek Steering Committee (TCSC) stated that it consists of 12 individuals who live in the area around Tongue Creek. It expressed concerns regarding Alberta Infrastructure's public consultation process and the request for an extension to the filing deadline. It indicated that Alberta Infrastructure has had almost two years to study the issue and that the public still has been given no indication of what has been accomplished to date. The TCSC noted that the public consultation process has been ineffective and problematic. It requested that an independent facilitator be put in place to run future public meetings and that the process provide the public an opportunity to discuss issues, project information and all alternatives to water storage.

The TCSC stated that Alberta Infrastructure should be directed to prepare a detailed schedule of activities to be completed within the extended time frame and then make that schedule available to the public. The public should also be able to comment and provide input into the schedule and its activities. If Alberta Infrastructure does not improve its public consultation process and implement some of its suggested changes, the TCSC indicated that it would not agree to an extension to the filing deadline.

2.15 Mr. Phil Bice

Mr. Bice noted that he is a landowner in the Tongue Creek area. He pointed out that there is a regional landfill site located near to the proposed water reservoir site on Tongue Creek. Mr. Bice was concerned with the possible risk of contamination to the reservoir if there is run-off from the landfill site.

2.16 Little Bow Hutterian Brethren

The Little Bow Hutterian Brethren submitted that the negotiations between the Alberta Government and the colony have been proceeding well. However, it indicated that other landowners who will be directly affected by the Little Bow River Reservoir project are apparently experiencing difficulties in negotiating property settlements with the Alberta Government. It suggested that the Panel should examine this issue to see if the process can be improved.

The Hutterian Brethren expressed concerns about the development of the Area Structure Plan for lands adjacent to the Little Bow River Reservoir and what use will be made of these lands. To date, the Hutterian Brethren has not been consulted on the development of the plan. It also requested that the Panel address this specific issue in its report.

2.17 Mr. Gary Flitton

Mr. Flitton indicated that, based on his experience as a member of the Little Bow River Basin Water Users Association, Alberta Infrastructure would have a difficult time in gathering a public consensus on how to proceed with the Board Order. He stated that there must be a common goal established for all participants in order for the Highwood Management Plan to be successful. Mr. Flitton noted that the Highwood Management Plan process must consider storage options as well. He believed that technical and scientific information on potential storage sites is necessary to make proper planning decisions for the Highwood River basin. Mr. Flitton recommended that

an independent facilitator be used in the Highwood Management Plan public consultation process and that the PAC consist of specific representatives to act on behalf of stakeholder groups.

2.18 Mr. Gerald Lyon

Mr. Lyon is a landowner whose property would be directly affected by the Little Bow River Reservoir and he is also a member of the Lower Mosquito Creek Water Users Association. He expressed concerns with regard to the economic viability of the project. Mr. Lyon expressed the opinion that the Highwood Management Plan should be developed immediately and the construction of the Little Bow River Reservoir and Clear Lake Canal be put on hold until the Highwood Management Plan is completed.

2.19 Alston Community Group

Mr. Ron Mueller, representing the Alston Community Group (ACG), expressed concerns about how the Alberta Government has been making decisions in the relocation of the Little Bow Hutterian Brethren colony. The ACG believed that negotiations with landowners affected by the Little Bow River Reservoir project have been one-sided and have been concentrated on the relocation of the colony. It requested that an independent party or mediator be involved in future land negotiations to ensure fairness to all affected parties. It indicated that the public consultation process has been exclusionary and that participants have not been able to obtain specific project information nor have their issues addressed by Alberta Infrastructure and Alberta Environment.

2.20 Ms. Karin Stalder

Ms. Stalder noted that she is a Tongue Creek resident and was concerned about the impacts that the Board Order is having on the Tongue Creek community. She stated that Alberta Infrastructure's public consultation process has not provided the necessary information required for participants to make informed decisions about the project. Ms. Stalder did not support an extension to the Board Order unless Alberta Infrastructure modified its public consultation process to become effective and inclusive. She believed that, through an improved process, Alberta Infrastructure and the public could develop specific criteria to eliminate potential storage sites from further consideration within a short time frame.

2.21 Ms. Jackie Nelson

Ms. Nelson is a landowner in the Women's Coulee Area and requested that the Panel re-examine the original Board approval to determine if the first three components are still necessary. She also stated that no work on any component of the Board Order should be completed until the Highwood Management Plan has been developed.

2.22 Mr. Morris Walsh

Mr. Walsh stated that he is a landowner in the Tongue Creek area and was concerned with the environmental and economic impacts of a proposed storage site on Tongue Creek. He also indicated that Alberta Infrastructure's public consultation process has not provided sufficient project information in order for participants to make informed decisions on the feasibility of the proposals. He believed that this problem must be resolved or the public will remain distrustful of Alberta Infrastructure and the entire process.

3 Views of the Panel

From the outset of the meeting, it was clear that the process which had been developed to address the Board Order had unintentionally created a great deal of concern for all parties involved. If any review of potential offstream storage options on the Highwood River system is to be ultimately successful, it will be necessary to address not only the time extension originally requested by Alberta Infrastructure but also the nature of the review process as well.

Accordingly, the Panel believes that the issues it must address are:

1) the nature of the storage review process and particularly its relationship to the Highwood Management Plan,
2) the public consultation necessary to carry out that review process, and
3) the expected timing of the review process.

3.1 Highwood Management Plan

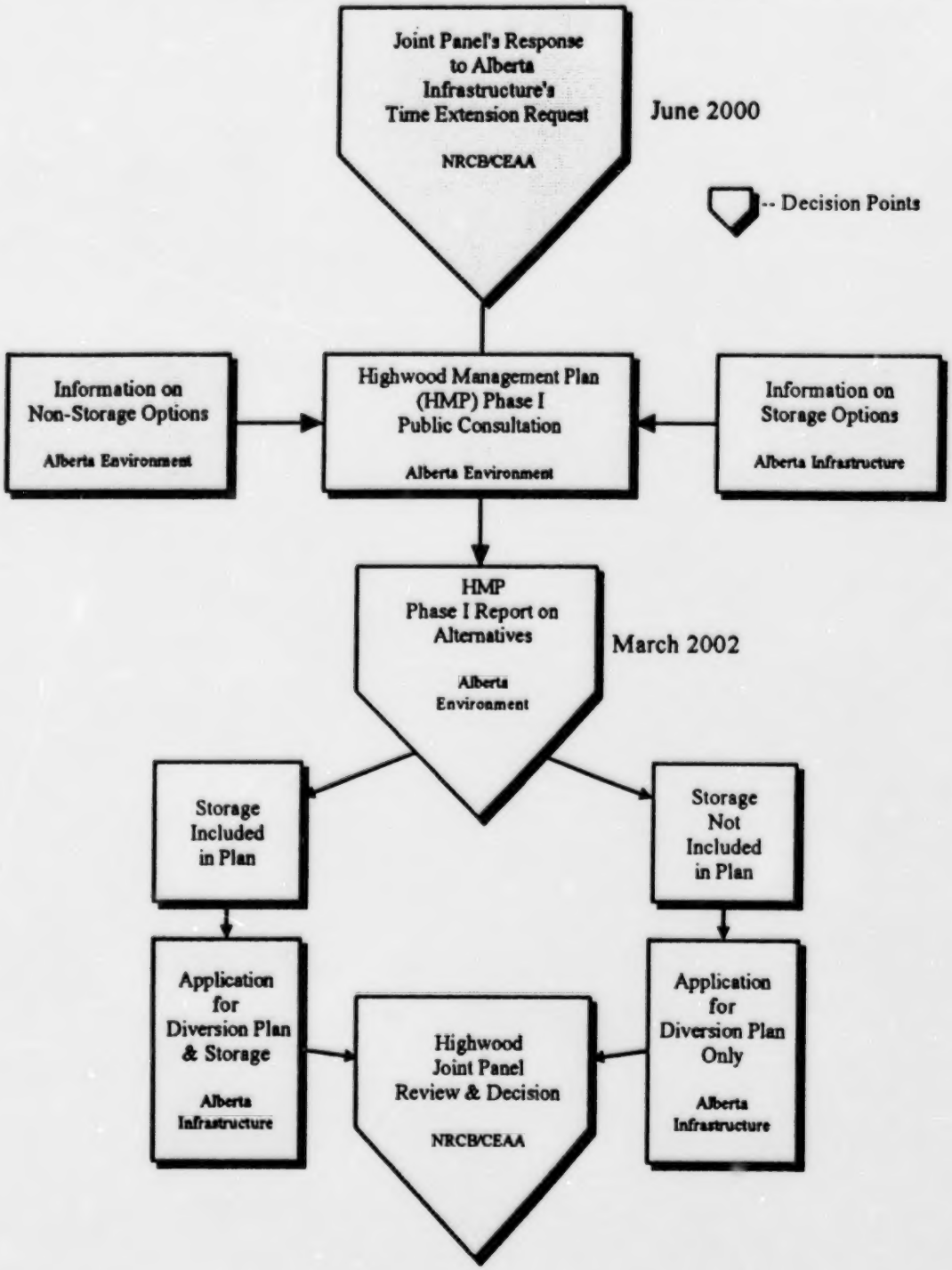
A number of parties asked the Panel to delay its consideration of storage options pending completion of the Highwood Management Plan. They argued that there may be other non-structural means of addressing water shortages and that it would be in the public interest to examine the full range of options as part of the Highwood Management Plan, rather than have Alberta Infrastructure pursue the single option of offstream storage. To not do so, they suggested, could potentially forgo other possible options. Alberta Infrastructure also noted that, in the course of its public discussions concerning alternative storage sites, it was being asked to address broader questions that it felt would be more correctly considered as part of the river basin planning process. The Panel notes that similar questions about the relationship between the Highwood Management Plan and offstream storage were raised during the initial hearing.

The Panel notes that significant progress now appears to have been made by Alberta Environment in the preparation of the Highwood Management Plan. Since Alberta Infrastructure believes that it will require an 18-month extension to comply with the Board Order, the Panel believes this is an opportune time to reconsider the sequencing and relationship between the Highwood Management Plan and the assessment of offstream storage. The Panel also agrees with the parties that storage is potentially just one component of a water management plan. Furthermore, it is clear that the issues related to storage affect a different constituency than was originally consulted for the review of the Little Bow Project, and may be better dealt with through a broader consultation process to be undertaken as part of a basin planning program. Based on these considerations, the Panel believes that the examination of storage sites would best be conducted within the context of the Highwood Management Plan, provided this can be accomplished in a timely manner.

As shown in Figure 2, the Panel still envisages a process that will ultimately result in Alberta Infrastructure making an application for approval of a revised diversion plan. However, the revised plan may or may not include storage. Furthermore, the creation of that application would be completed as one component of the broader Highwood Management Plan, which would be carried out under the direction of Alberta Environment.

Figure 2

Suggested Process and Timeframe for Phase I of the Highwood Management Plan and the Investigation of Offstream Storage Sites



The Panel expects, as was described by Alberta Environment in its submissions at the initial hearing, that the Highwood Management Plan will investigate the full range of options for addressing existing and future water demand and other issues. More specifically, the Panel requests that Alberta Environment include non-storage alternatives to address management needs, including meeting the IFN for the Highwood River in low flow months, and report on this issue.

The Panel believes that, within the Highwood Management Plan, Alberta Infrastructure's role will include providing Alberta Environment with technical advice on the relative merits of the various storage options. Alberta Infrastructure would also be responsible for preparing any required application for the preferred storage site, if the results of the Highwood Management Plan indicate that storage is a necessary or preferred option. Finally, Alberta Infrastructure remains responsible for submitting an application for the revised diversion plan.

The Panel heard a number of arguments that the Highwood Management Plan and the investigations into storage should be done sequentially, rather than concurrently. Using this approach, the potential alternative storage sites would only need to be assessed once the need for storage has been determined. The Panel also heard, however, that extensive delays in the review of the various possible storage sites would represent an undue hardship for people who have property interests in their vicinity. The Panel finds merit in both arguments. However, the Panel believes that the public interest would be best served by having Alberta Infrastructure continue to conduct its investigations into storage sites while Phase I of the Highwood Management Plan is underway.

This does not mean that the Panel is predisposed toward storage. Rather, the Panel wants to ensure that if the Highwood Management Plan indicates that storage is necessary, the resulting decision-making process on a preferred storage site can be completed as soon as possible.

At the meeting, there were a number of requests that the Panel take a more direct role in the review process by monitoring the progress of the work that will eventually lead to a public hearing. The Panel believes that there is merit in that suggestion. Therefore, the Panel will schedule public meetings to review the progress of the development of the Highwood Management Plan in general and the work of Alberta Infrastructure in particular.

3.2 Public Consultation

The Panel believes that effective public consultation is clearly fundamental to this phase of the review, particularly where there is an uneven level of public understanding of basin issues and a marked lack of consensus as to approach. The Panel notes that most participants, including Alberta Infrastructure, support the concept of an independent facilitator and a central advisory / coordinating body (the PAC) for the consultation process. The Panel also notes that Alberta Environment proposed an independent facilitator and the creation of a PAC as part of its Highwood Management Plan process. The Panel agrees that this appears to be the most appropriate way to proceed.

In addition, some participants at the public meeting, including notably the Baker Creek / Old Women's Coulee Coalition, submitted that there should be a high level of public participation in

the development of the terms of reference for any studies, in the data reviews and in the preparation of reports. The Panel generally agrees with the spirit and intent of these submissions, in that an open and transparent process best meets current standards of communication for major projects. The Panel expects that Alberta Environment will incorporate as many of the public views regarding the participation of the public in the Highwood Management Plan process as is practical.

The Panel is concerned with some of the comments made at the public meeting to the effect that a representative coordinating body (i.e. the PAC) is neither workable nor desirable to some individuals in the area. In particular, many parties indicated that they were unwilling to have their individual views or interests represented by anyone other than themselves. As noted above, the Panel is of the view that some form of effective method for the applicant to understand and address broad public issues is critical. However, given the large number of potentially affected persons and the diversity of interests, the Panel does not believe that such consultation must or even can be designed so as to allow direct and ongoing participation in the process by every individual.

While the details of the eventual consultation model selected should be up to the parties affected, the Panel expects that the proposed PAC will make reasonable efforts to ensure that broader communication with the general public is implemented. Furthermore, all parties should note that their participation in the consultation process does not in any way reduce their rights to participate in the Panel's review process, either as members of groups or as individuals.

Another common concern regarding effective public consultation raised at the meeting was the impact of the rapid influx of new residents into the region. The Panel is particularly concerned with the submissions before it regarding rapid development in the Municipal District of Foothills and the Town of High River, both at potential reservoir sites and in potentially affected riparian areas. The Panel believes that individuals purchasing or developing properties in these locations need as much information as possible regarding potential future land uses. The Panel strongly encourages the planning authorities in the Town of High River and in the Municipal District of Foothills to participate in the Highwood Management Plan process, possibly as members of the PAC, so that there is a coordinated approach to development decisions.

3.3 Time Extension

The Panel agrees with Alberta Infrastructure that an extension of time for further information gathering is appropriate in this matter. The Panel believes that Alberta Environment has set out a reasonable timetable in its submission, with the added six months referred to in closing remarks. This schedule would see the Phase 1 Highwood Management Plan process commence immediately and end by March 2002.

This schedule may appear too hasty for some of the interveners who appeared at the public meeting. However, owing to continued uncertainty of land uses in the potential storage areas and the related stress to residents and communities, the Panel does not agree with those submissions urging two or three-year studies of these matters. The Panel believes the most reasonable proposal before it is a time extension to March 2002 on the terms set out by Alberta Environment and as discussed in this report.

The Panel agrees with many interested parties that the framework for moving the process forward in a timely manner should be the completion of the Highwood Management Plan, with a review of storage options as one component. The Panel also agrees that it should monitor progress by requiring periodic public report dates. The Panel has therefore set out a diagram of the process (as shown in Figure 2), and has also dealt with the scheduling of periodic reporting to the Panel in Section 4 of this Report.

The Panel believes that the Highwood Management Plan information review processes will be iterative and therefore it may be possible to complete certain aspects of the work more quickly than planned, especially with regard to certain options. When it does become apparent that certain options are not feasible, the Panel expects that Alberta Environment and Alberta Infrastructure will communicate these results to the affected public in a timely fashion.

The Panel also expects Alberta Infrastructure to complete its evaluation of potential storage sites in an expedient fashion. In general the Panel expects that March 2002 will be an outside deadline. As indicated in Figure 2, the Panel expects to receive an application from Alberta Infrastructure seeking approval of either a diversion plan for the low flow months or a diversion plan for these months with storage at a particular site.

3.4 Other Matters

3.4.1 Supervision of landowner matters

Two participants at the public meeting, the Hutterian Brethren and Mr. Mueller, raised issues relating to current landowner concerns in the area of the Little Bow Reservoir, which was approved in the prior Decision Report 9601. The Panel, while sympathetic to such concerns, does not believe it has the authority, based upon its legislated mandate, to address these concerns. Neither the NRCB nor the CEAA legislation provides the Panel with ongoing regulatory powers once its provincial decisions and federal recommendations have been made. The Panel does not have the authority to make any order relating to expropriations, negotiations or the planning process under the *Planning Act* (Alberta).

3.4.2 Moratorium on development at potential reservoir sites

Alberta Infrastructure urged the Panel to make an order prohibiting further development at the candidate storage sites until the matter of offstream storage in the Highwood basin is resolved. The panel agrees that the potential development of a reservoir at Stimson Creek, Tongue Creek or Woman's Coulee is clearly incompatible with further residential or commercial development of those sites. Until the matter of offstream storage is resolved, any new developments undertaken at those sites will be at risk. The Panel also notes that there is some potential that the Highwood Management Plan might identify areas other than the candidate storage sites – particularly riparian zones – that should also be kept free of development.

The Panel notes that the authority to curtail the development of the potential reservoir sites while the matter of storage is pending generally resides with the municipalities under the *Municipal Government Act* and with the provincial government under the *Public Works Act*. While the Panel understands Alberta Infrastructure's desire to prevent the untimely development of the

candidate sites and the associated public costs and impacts, the Panel is also aware that a moratorium, as requested, will significantly interfere with the rights of property owners. The Panel intends to discuss this matter further at the next public meeting in November and will want to hear the views of all parties, including the Town of High River and the Municipal District of Foothills. At that time, it would be appropriate for Alberta Infrastructure to advise the Panel of its intentions concerning landowner development at the candidate sites and its willingness to impose restrictions under the *Public Works Act*. Until then, the Panel trusts that the municipal and provincial authorities will take whatever steps are needed to ensure that anyone contemplating the purchase or development of a property at one of the potentially affected sites is made aware that those sites are under review as one facet of the Highwood Management Plan.

Earlier in this report, the Panel recommended that the municipal planning authorities actively participate in the process for developing the Highwood Management Plan. The Panel believes that potentially affected members of the public also need to make every effort to keep informed about the matters under discussion in order to ensure that they understand the potential issues associated with future developments in the Highwood basin.

3.4.3 Participant funding

A number of parties indicated that funding should be made available so that they could more effectively review information and participate in the process, including hiring technical consultants and legal representation. At this point, neither the NRCB nor the Canadian Environmental Assessment Agency can provide participant funding because there is not yet a requirement for a hearing. The Panel will be prepared to consider incurred costs when such a hearing occurs.

3.4.4 Alberta Infrastructure's request for direction

Alberta Infrastructure asked the Panel to respond to a number of questions, including the appropriate basis and manner by which one or more of the potential storage sites could be eliminated from further consideration.

The Panel is not prepared to direct Alberta Infrastructure on the best procedure for selecting a preferred site or on how it should address other related issues that may then become fundamental parts of an application to the Panel. The Panel believes that Alberta Infrastructure must use its own professional judgment to carry out the appropriate site assessments. Since both the *CEAA* and the *Alberta Environmental Protection and Enhancement Act* require an evaluation of alternative sites as part of an environmental impact assessment report, the adequacy of the site selection process can then be tested as part of the project review.

With regard to the other questions asked by Alberta Infrastructure for response by the Panel, the Panel believes that this report has addressed most of the issues raised, without mandating specific approaches to Alberta Infrastructure or Alberta Environment in respect of further applications for approvals of reviewable projects.

4 Next Steps

As noted earlier, the Panel accepts the request of the parties for its further involvement in the ongoing steps that will lead to an application being submitted by Alberta Infrastructure for either a Diversion Plan or a Diversion Plan and Storage. To this end, the Panel believes that it is in the public's best interest that it remains involved during the development of the Phase I Highwood Management Plan. The Panel will hold public meetings on an as-needed basis to facilitate the process that will result in completion of the Phase I Highwood Management Plan by the outside deadline of March 2002.

The Panel currently plans to schedule the next public meeting sometime in the first half of November 2000. The Panel requests that Alberta Environment present an update at this meeting on the public consultation process, including the PAC. In order for the Phase I Highwood Management Plan to meet the outlined deadline, the Panel would anticipate that the PAC would be established and working as a distinct entity by the time of the November 2000 meeting.

The Panel also requests that Alberta Environment present an update on the status of the Phase I Highwood Management Plan at the November 2000 meeting. Within the update, the Panel would expect to hear in particular about the status of non-storage alternatives being considered within the Highwood Management Plan. Additionally, an update on the progress of the feasibility studies for and the environmental, social and economic assessments of the potential offstream storage sites would be required. The Panel also requests Alberta Environment, Alberta Infrastructure, the Town of High River and the Municipal District of Foothills to discuss the question of a development moratorium at potential storage sites at the same meeting.

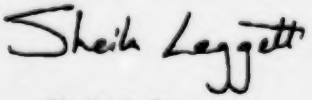
The Panel anticipates that two additional public meetings will be required in 2001, but the dates and requirements for those meetings will be established following the November 2000 meeting.

DATED at Edmonton, Alberta on 9 June 2000.

Joint Natural Resources Conservation Board/Canadian Environmental Assessment Review Panel

Brian F. Bietz
Ph.D., P.Biol.

Carolyn Dahl Rees
M.A., LL.B.



Sheila A. Leggett
M.Sc., P.Biol, P.Ag.